

REMARKS

Reconsideration of this application is respectfully requested in light of the amendments and remarks made herein. Claims 1-32 were last presented for examination. Claims 33-93 were previously withdrawn from consideration. Claim 1 is amended herein.

In brief, the present claimed invention is directed to a magazine-based data cartridge library. The claimed library is comprised of: (a) a frame; (b) a shelf system; (c) drive means; (d) a cartridge transport device for moving a data cartridge between a data cartridge magazine and the drive means; (e) a magazine picker for displacing a data cartridge magazine towards and away from the shelf; and (f) an elevator for moving the magazine picker. Further, the magazine picker comprises (g) a magazine support generally comprising a base plate on which said magazine can substantially rest under the influence of gravity; and (h) means for transporting a data cartridge magazine between the magazine support and a shelf of the shelf system. During transporting of a data cartridge magazine between the magazine support and the shelf, the magazine support remains in substantially the same position (emphasis added).

Rejections Under 35 U.S.C. § 102

Claims 1, 2, 4, 7-21 and 23-27 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,818,723 to Dimitri (hereinafter referred to as "Dimitri").

Dimitri is directed to a quick access data storage library with backup capability featuring bins for supporting magazines containing data storage media. The magazines can be inserted in or withdrawn from front open sides of the bins by a front magazine picker or inserted in or withdrawn from back open sides of the bins by a back magazine picker. The magazines can be moved to drives by a transport assembly whereby storage media can be transported from the magazines to the drive.

Dimitri describes the magazine picker in detail (as illustrated in FIG. 4) as a pair of jaws that moves towards a bin, grasps the magazine with the jaws and, while supporting the magazine in the jaws, moves away from the bin:

The magazine picker 70 has top and bottom jaws 74 and 76 which have forwardly located inwardly facing lips, the lip for the bottom jaw 76 being illustrated at 78. The lips of the jaws 74 and 76 are receivable by the top and bottom recesses 42 or 44 of the magazines, so that when the jaws 74 and 76

are clamped onto the magazine, the magazine is rigidly supported by the magazine picker 70. Each jaw is pivoted relative to a support plate 79, the top jaw 74 being pivoted at 80. The jaws are opened and closed by a solenoid 82. Intermediate the jaws, is a plunger 84 which reciprocates in a Z direction for pushing a magazine into a magazine storage bin after the jaws are opened. The Z movement of the plunger 84 is caused by pistons 86 which are part of longitudinal solenoids 88. The support plate 79, which mounts the jaws 74 and 76, slides back and forth with respect to a top support plate 90, so that the jaws can move in a Z direction to withdraw or insert a magazine into a magazine storage bin. This is accomplished by providing the support plate 79 with journals 92 which slidably receive rods 94 which, in turn, are mounted at the bottom of the support plate 90 by downwardly extending flanges 96. A motor 98 is connected to the support plate 92 and operates a belt 100 which is connected to the support plate 79 by a pair of secured tabs 102. When the motor is operated, the support plate 79, which carries the jaws 74 and 76, is operated in a Z direction for inserting and withdrawing magazines from the magazine storage bins" (Column 5, Lines 1-27) (emphasis added).

The magazine while in the jaws is transported to the drive and disc loader combination 52 where it is disposed (see Column 6, Lines 8-15).

In contrast, as recited in amended claim 1 of Applicant's claimed invention, "said magazine picker comprises: a magazine support generally comprising a base plate on which said magazine can substantially rest under the influence of gravity; and means for transporting one of said at least two data cartridge magazines between said magazine support and said at least one shelf, wherein during transporting of one of said at least two data cartridge magazines between said magazine support and said at least one shelf, said magazine support remains in substantially the same position".

Nowhere does Dimitri disclose a magazine support structure generally comprising a base plate on which the magazine can substantially rest under the influence of gravity that remains in substantially the same position while a magazine is transported via a means for transporting from the substantially stationary magazine support structure to a shelf. Because Dimitri fails to disclose at least this discussed feature of claim 1, it is clear that Dimitri does not anticipate claim 1, and applicant respectfully submits that claim 1 is allowable.

Dependent claims 2, 4, 7-21 and 23-27, each depend directly or indirectly from independent claim 1 and are distinguishable over Dimitri at least for the same reasons as set forth above. Therefore, Applicant respectfully submits that claims 2, 4, 7-21 and 23-27 are also allowable.

Rejections Under 35 U.S.C. § 103

Claims 28 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Dimitri in view of U.S. Patent No. 5,638,347 to Baca (hereinafter referred to as "Baca").

Dependent claims 28 and 29 each depend directly from independent claim 1 which, as discussed above, is distinguishable over Dimitri. The combination of Dimitri and Baca still does not disclose every element recited by Applicant's claim 1. According to the Examiner, Baca adds to the disclosure of Dimitri a "means for sensing." Even assuming, *arguendo*, that the Examiner's combination of Dimitri and Baca is proper, and assuming that the Examiner's contention regarding the combined disclosure of Dimitri and Baca is accurate, the proffered combination still fails to teach or suggest each element of independent claim 1, such as a magazine support structure generally comprising a base plate on which the magazine can substantially rest under the influence of gravity that remains in substantially the same position, and thus cannot render dependent claims 28 and 29 obvious. Applicant thus respectfully submits that claims 28 and 29 are allowable.

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Dimitri in view of U.S. Patent No. 5,943,305 to Fitzgerald et al (hereinafter referred to as "Fitzgerald").

Dependent claim 3 depends directly from independent claim 1 which, as previously discussed, is distinguishable over Dimitri. The combination of Dimitri and Fitzgerald still does not disclose every element recited by Applicant's claim 1. The Examiner asserts that Fitzgerald adds to the disclosure of Dimitri an "entry/exit space that is interior to the space defined by the frame." Even assuming, *arguendo*, that the Examiner's combination of Dimitri and Fitzgerald is proper, and assuming that the Examiner's contention regarding the combined disclosure of Dimitri and Fitzgerald is accurate, the proposed combination fails to teach or suggest each element of independent claim 1, such as a magazine support structure generally comprising a base plate on which the magazine can substantially rest under the influence of gravity that remains in substantially the same position and thus cannot render dependent claim 3 obvious. Applicant thus respectfully submits that claim 3 is allowable.

Claim Objections

According to the Office Action under allowable subject matter, claims 5, 6, 22 and 30-32 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Dependent claims 5, 6, 22 and 30-32 depend from independent claim 1 which distinguishes over Dimitri for the same reasons as set forth above and therefore Applicant submits claims 5, 6, 22 and 30-32 are allowable as dependent from claim 1.

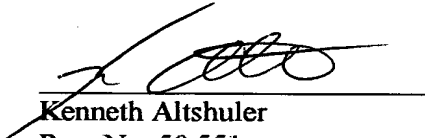
* * *

Authorization To Charge Necessary Fees

While no fee is believed due with this submission, the Commissioner is hereby authorized to charge any necessary fees associated with this submission, or credit any overpayment, to Deposit Account No. 50-0289.

Respectfully submitted,

Dated: 10/26/05


Kenneth Altshuler
Reg. No. 50,551

Correspondence Address

WALL MARJAMA & BILINSKI LLP
101 South Salina Street, Suite 400
Syracuse, New York 13202
Telephone: (315) 425-9000
Facsimile: (315) 425-9114

Customer No.: 20874

PATENT TRADEMARK OFFICE